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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/747,063

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Timothy A. Best

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01/09/2009

SUGHRUE MION PLLC

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2100 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, DC 20037

EXAMINER

PILLAI, NAMITHA

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* TIMOTHY A. BEST, MICHAEL J. DOCKTER,  
STEPHAN GRELL, and RONALD W. LYNN

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Application No. 09/747,063  
Technology Center 2100

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Mailed: 9 January 2009

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Before LAWRENCE J. BANKS *Paralegal Specialist*  
BANKS, *Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on 12 December 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER, EVIDENCE RELIED UPON

Section §1207.02 of the *Manual of Patent Examining Procedure* (MPEP) (Eighth Edition, Rev. 6, September 2007) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . . .

(8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner's Answer mailed 4 March 2008 is deficient because the "Evidence Relied Upon" section fails to include the reference(s) Southgate (US 5,561,757) cited on page 10 and the article "The Swing Tool Set" cited on page 11 of the Examiner's Answer's grounds of rejection of claims 5-8, 13, 19-22, 27, 33-36, 41 and 59 under 35 USC § 103(a).

Appropriate correction is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) issue a PTO-90 citing the missing references listed under the Evidence Relied Upon section, paragraph (8); and
- 2) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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